

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

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GREENTEX GREENHOUSES, BV,

Plaintiff,

v.

PONY EXPRESS GREENHOUSE,

Defendant.

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OFFICE OF THE CLERK

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MEMORANDUM AND ORDER

The plaintiff's complaint, filed on December 22, 2004, designated Lincoln, Nebraska as the place of trial. See filing 1. The answer filed by the defendant on July 7, 2005 requested North Platte, Nebraska as the place of trial. Filing 27. The defendant submitted no evidence or argument in support of its request to change the designated trial location.

The court's order setting progression of the case, filing 36, entered on October 27, 2005, stated: "Non-jury trial is set to commence, at the court's call, during the week of April 24, 2006, in Lincoln, Nebraska Filing 36 ¶ 10. The defendant did not object to this order.

The defendant's counterclaim, filed on November 4, 2005, designates North Platte, Nebraska as the place of trial. Filing 38. The answer to the counterclaim objects to the North Platte trial designation. Filing 39 ¶ 6.

Before me are the parties' conflicting requests for place of trial. NeCivR 40.1(b) states that "[e]ach defendant . . . at the time of filing that defendant's first pleading in a civil action . . . may file a written request for trial at Omaha, Lincoln, or North Platte. If the request is for a place

different from that requested by the plaintiff, . . . it must be accompanied by a supporting affidavit.

The plaintiff's complaint requested trial in Lincoln, and the defendant's answer requested trial in North Platte. However, the defendant did not comply with the court's local rules in raising the place of trial issue. Specifically, the defendant has not filed an affidavit in support of its conflicting request for place of trial, and the court has no evidence before it to determine whether the trial location should be changed to North Platte for the convenience of the litigants and witnesses. I shall therefore deny the defendant's request for trial in North Platte.

IT THEREFORE HEREBY IS ORDERED: The defendant's request for trial in North Platte is denied. The place of trial for this case is Lincoln, Nebraska.

DATED this 23rd day of November, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge